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No. 82-1403

In the Supreme Court of the United States

OCTOBER TERM, 1982

INTERNATIONAL FASHIONS, PETITIONER

v.

ANGELA MARIE BUCHANAN, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

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Petitioner contends that Section 9(a) of the Trading With The Enemy Act ("TWEA"), 50 U.S.C. App. 9(a), authorized it to bring an action to recover an import surcharge lawfully imposed by the President under Section 5(b) of that Act, 50 U.S.C. App. (& Supp. V) 5(b).

1. In 1971, the President imposed a 10% ad valorem surcharge on most dutiable imports. Proclamation No. 4074, 3 C.F.R. 60 (1971-1975 Comp.). The United States Court of Customs and Patent Appeals upheld the validity of the surcharge as an exercise of the President's authority under Section 5(b)(1) of the TWEA, 50 U.S.C. App. 5(b)(1), to regulate imports "[d]uring [a] period of national emergency declared by the President." *United States* v. *Yoshida International, Inc.*, 526 F.2d 560 (C.C.P.A. 1975); *Alcan Sales, Div. of Alcan Aluminum Corp.* v. *United States*, 534 F.2d 920 (C.C.P.A.), cert. denied, 429 U.S. 986 (1976) ("*Alcan I*").

2. Petitioner International Fashions sought to recover surcharges imposed under the Presidential proclamation by filing an action pursuant to Section 9(a) of the TWEA in the Court of International Trade (Pet. App. 1a). That court rejected petitioner's claim as controlled by *Yoshida* and *Alcan I* (Pet. App. 26a, 42a). The court of appeals affirmed per curiam on the basis of its decision in *Alcan Sales, Div. of Alcan Aluminum Corp.* v. *United States*, 693 F.2d 1089 (Fed. Cir. 1982) ("*Alcan II*"), petition for cert. pending, No. 82-1384, which was handed down that same day (Pet. App. 75a-76a). In *Alcan II*, the court held that Section 9(a) of the TWEA does not authorize an action in the Court of International Trade to recover the surcharge imposed by Proclamation 4074. The court also held that its prior decisions in *Yoshida* and *Alcan I* conclusively established the validity of that surcharge. See also *Cornet Stores* v. *Morton*, 632 F.2d 96 (9th Cir. 1980), cert. denied, 451 U.S. 937 (1981); *Henry Pollak, Inc.* v. *Blumenthal*, 444 F.Supp. 56 (D.D.C. 1977), aff'd mem., 593 F.2d 1371 (D.C. Cir.), cert. denied, 444 U.S. 836 (1979).

3. Petitioner in this case raises no issue not also raised in the petition in *Alcan II*, No. 82-1384. The petition in this case should therefore be denied for the reasons stated in the Memorandum for the United States in Opposition in *Alcan II*.*

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*A copy of the Memorandum in Opposition in *Alcan II* is being served upon counsel for petitioner in this case.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

APRIL 1983

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